

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-14-C - ORDER NO. 2004-243
AUGUST 2, 2004

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| IN RE: CAT Communications International, Inc., |) ORDER TAKING |
| |) OFFICIAL NOTICE AND |
| Complainant/Petitioner, |) DISMISSING |
| |) COMPLAINT WITH |
| vs. |) PREJUDICE |
| |) |
| BellSouth Telecommunications, Inc., |) |
| |) |
| Defendant/Respondent. |) |
| _____ |) |

This matter comes before the Public Service Commission of South Carolina (the “Commission”) upon BellSouth Telecommunications, Inc.’s. (“BellSouth’s”) Motion to Take Official Notice, Motion to Dismiss and Motion to Require Appearance of South Carolina Counsel. For the reasons set forth below, the Commission finds that BellSouth’s Motion to Take Official Notice and Motion to Dismiss should be granted. BellSouth’s Motion to Require Appearance of South Carolina Counsel, therefore, is moot.

On January 7, 2004, CAT Communications, International, Inc. (“CAT”) filed a Complaint asking the Commission to direct BellSouth to stop charging or collecting 911 charges and telecommunications relay services charges from CAT. BellSouth filed its Motion to Take Official Notice, Motion to Dismiss, and Motion to Require Appearance

of South Carolina Counsel on March 31, 2004, and CAT did not file a response to any of BellSouth's Motions.

MOTION TO TAKE OFFICIAL NOTICE

CAT alleges that it currently purchases and resells BellSouth services pursuant to a resale agreement between CAT and BellSouth. This Agreement was filed with the Commission on December 16, 2002, and was approved by the Commission on December 30, 2002, in Docket No. 2000-0051-C. On February 24, 2003, CAT and BellSouth filed an Amendment to the Interconnection Agreement dated November 6, 2002, and the Commission approved this Amendment on March 11, 2003. These are matters of public record and pursuant to S.C. Code Ann. §1-23-330(4) and Regulation 103-870(C), the Commission hereby grants BellSouth's unopposed Motion to Take Official Notice of the Agreement and of the Amendment dated November 6, 2002.

MOTION TO DISMISS

CAT complains that BellSouth is inappropriately collecting 911 charges¹ and telecommunications relay services charges² from CAT. *See* Complaint at p. 1.

¹ The "911 charge" is a fee, established by local governments, for the 911 service start-up equipment costs, subscriber notification costs, addressing costs, billing costs, and nonrecurring and recurring installation, maintenance service, and network charges for a service supplier providing 911 service as provided in Chapter 47 of Title 23 of the South Carolina Code. *See* S.C. Code Ann. §23-47-10(1).

² The telecommunications relay service charge is a charge, established by the Commission, to fund the Dual Party Relay System. *See* S.C. Code Ann. §58-9-2530(A). This System is "a procedure in which a deaf, hearing, or speech impaired [person with a special keyboard device] can communicate with an intermediary party, who then orally relays the first party's message or requests to a third party, or a procedure in which a party who is not deaf or hearing or speech impaired can communicate with an intermediary party who then relays the message or request to a [person with a special keyboard device]." *See* S.C. Code Ann. §58-9-2510(3).

Specifically, CAT alleges that it collects these charges from its own end users, and therefore, it should be allowed to retain associated administrative fees. *See Id.* at p. 3, ¶4; p. 4, ¶¶ 5 & 8. CAT asks the Commission to direct BellSouth to “cease and desist from charging or collecting ‘911’ and other surcharges from [CAT].” *Id.* at p. 6.

BellSouth argues that CAT’s Complaint should be dismissed because it fails to state a claim upon which relief may be based. BellSouth’s motion to dismiss “must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” *See Brown v. Theos*, 526 S.E.2d 232, 235 (S.C. Ct. App. 1999). For the following reasons, the Commission finds that BellSouth’s Motion to Dismiss should be granted.

Section 1.1.5 of Attachment 7 of the Resale Agreement that CAT voluntarily entered into, and that this Commission approved, states in pertinent part:

BellSouth will also bill [CAT] and [CAT] will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End User common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.

This language is clear and unambiguous, and it must be construed according to the terms the parties have used. *See Stewart v. State Farm Mut. Auto. Ins. Co.*, 533 S.E.2d 597, 601 (S.C. Ct. App. 2000). *Accord Hardee v. Hardee*, 585 S.E.2d 501, 503 (S.C. 2003). This contractual language expressly allows BellSouth to do what CAT has asked the Commission to stop BellSouth from doing.

Similarly, CAT’s apparent contention that BellSouth’s actions somehow violate South Carolina’s 911 or telecommunications relay statutes has no foundation. As a

provider of service to CAT, BellSouth is allowed to collect the appropriate 911 charges from CAT (its resale customer), deduct an appropriate administrative fee, and then remit the funds to the appropriate local government pursuant to section 23-47-50 of the South Carolina Code. Similarly, Section 58-9-2530 and the Commission's regulations and orders implementing that section allow BellSouth to collect telecommunications relay charges and transfer the monies collected to the Dual Party Relay Service Operating Fund.

Because BellSouth's Agreement with CAT expressly authorizes BellSouth to bill and collect 911 and relay charges from CAT, and because nothing in South Carolina statutes prohibits this conduct by BellSouth, CAT's Complaint does not state a claim upon which relief may be granted. Accordingly, BellSouth's Motion to Dismiss CAT's complaint is granted.³

CONCLUSION

Accordingly, BellSouth's Motions to Take Official Notice and to Dismiss CAT's Complaint are granted, and the Commission hereby orders that CAT's Complaint in this docket is dismissed with prejudice.

³ As a result of this decision, BellSouth's Motion to Require Appearance of South Carolina Counsel is moot.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)